

after the service date of the notice of appeal.

(b) *Contents of complaint.* If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts pleaded this contention is based.

(c) *Answer to complaint.* The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him by the Administrator. Failure to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. Respondent's answer shall also include any affirmative defense that respondent intends to raise at the hearing. A respondent may amend his answer to include any affirmative defense in accordance with the requirements of § 821.12(a). In the discretion of the law judge, any affirmative defense not so pleaded may be deemed waived.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.32 Burden of proof.

In proceedings under section 609 of the Act, the burden of proof shall be upon the Administrator.

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for

imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989]

Subpart E—Law Judges

§ 821.35 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the Docket Section, Office of Administrative Law Judges, for handling by the chief law judge, who may handle these matters personally or who may delegate all or any of them to other law judges for decision. After assignment, all motions, requests, and documents shall be addressed to that